

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DOUGLAS C. SHAFFER,)
vs.)
Plaintiff,)
vs.) NO. CIV-10-774-D
DIRECT MEDICAL, INC., et al.,)
Defendants.)

O R D E R

Plaintiff, appearing *pro se* and *in forma pauperis*, brought this action pursuant to 42 U.S.C. § 1983 and other federal statutes. He alleges the defendants have violated his constitutional rights, and he also contends they violated the Fair Labor Standards Act (“FLSA”), 29 U. S. C. § 201 *et seq.*, by failing to pay minimum wages and other benefits for work performed during his incarceration. Plaintiff also alleges a claim under the Oklahoma Minimum Wage Act and asserts other state law claims. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Valerie K. Couch for initial proceedings. Defendants filed a motion [Doc. No. 54] to dismiss Counts I, II, and III of the Second Amended Complaint, and Plaintiff responded.

On February 2, 2012, the Magistrate Judge filed a Report and Recommendation [Doc. No. 72] in which she recommended the Court grant the motion to dismiss all asserted federal claims. She also recommended the Court decline to exercise supplemental jurisdiction over the pendent state law claims in accordance with 28 U. S. C. § 1337(c).

In the Report and Recommendation, the Magistrate Judge advised Plaintiff of his right to object to the same, and she scheduled a February 23, 2012 deadline for filing such objections. The Magistrate Judge also expressly advised Plaintiff that a failure to timely object would constitute a

waiver of his right to appellate review of the factual and legal issues addressed in the Report and Recommendation.

The deadline for filing objections has expired, and Plaintiff has not filed an objection or sought an extension of time in which to do so. Accordingly, the Report and Recommendation [Doc. No. 72] is adopted as though fully set forth herein. The motion to dismiss [Doc. No. 54] is granted, and the federal claims asserted by Plaintiff are dismissed. Inasmuch as the Magistrate Judge correctly concluded the FLSA does not apply to prison inmates, Plaintiff's FLSA claims are dismissed with prejudice, as is his claim pursuant to 18 U. S. C. § 1761. Plaintiff concedes he cannot establish his 42 U. S. C. § 1981 claim, as no racial discrimination is at issue; accordingly, that claim is dismissed with prejudice. With respect to his § 1983 and § 1985 claims, the Magistrate Judge correctly concluded those claims are based only on the dismissed FLSA allegations. Therefore, those claims are also dismissed. Pursuant to 28 U. S. C. § 1367(c), the Court declines to address the pendent state law claims, and Plaintiff may reassert those claims in the proper state forum.

IT IS SO ORDERED this 28th day of February, 2012.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE